

Information for Schools Regarding the Final Rule on Public Charge and Its Potential Effects on Immigrant Students and Families

In light of the recently finalized Public Charge Rule by the U.S. Department of Homeland Security (DHS), the National Association of School Psychologists (NASP) is releasing guidance and clarifying information regarding the rule change and its potential effects on children, families, and schools. Educators and child advocates are concerned that immigrant families may be reluctant to access or apply for various public benefits out of fear that doing so may prevent them from becoming a legal permanent resident in the future, or that they have the misperception that accessing certain services may bring them to the attention of Immigration and Customs Enforcement (ICE). **Importantly, the final rule on public charge *does not* penalize children—or their parents—who access health and nutrition services through school, nor should accessing these services result in an increased risk of ICE enforcement.**

WHAT IS A PUBLIC CHARGE AND HOW DOES IT RELATE TO IMMIGRATION STATUS?

Public charge is an immigration term that has been used to refer to individuals who rely on the government for their main source of support. In order to determine if an immigrant is likely to be a public charge, when a person enters the United States or applies to become a legal permanent resident (green card holder), the government uses a *totality of circumstances* test based on a number of various weighted factors, including a person's age, health, family status, financial status/income (including receipt of certain specified public benefits), education/skills, receipts, and more.

The final rule on public charge treats each of the following negatively in a public charge decision: earning less than 125% of the federal poverty level; being a child or a senior; or having certain health conditions, limited English ability, less than a high school education, a poor credit history, and other factors. It also expands the number of public benefits considered when making decisions about a person's immigration status. **The final rule is being challenged in court, but if it is not blocked by a court it will take effect on October 15, 2019.**

WHAT DOES THE FINAL RULE ON PUBLIC CHARGE SAY ABOUT USE OF PUBLIC BENEFITS?

As part of the totality of circumstances test, application for or receipt of certain public benefits for more than 12 months within any 36-month period is considered as a heavily weighted negative factor. The public benefits that can be considered under the final rule are:

- **Cash assistance programs.** Any federal, state, local, or tribal cash assistance for income maintenance, including TANF, SSI, and general assistance programs.
- **Medicaid, but with important exceptions** including: services to children under 21 years old, pregnant women and women 60 days postpartum, and coverage for emergency services. The final rule clearly states that DHS will not consider services or benefits provided in connection with the Individuals With Disabilities Education Act, or school-based services or benefits provided to individuals who are at or below the oldest age eligible for secondary education as determined under state or local law.
- **The Supplemental Nutrition Assistance Program (SNAP)**, which is commonly known as Food Stamps. *Important note related to school services:* Families who qualify for SNAP or TANF also automatically qualify for free and reduced price meals at school. If a family withdraws from SNAP (or TANF), they lose the automatic qualification for the free and reduced price meal as well. Importantly, children whose families are below the income threshold are still eligible and will not be penalized for receiving free and reduced price meals if they apply directly through school. However, they will need to provide proof of eligibility through other means, such as verification of income, when the family fills out the application through their school.
- **Federal Housing Assistance** (public housing or section 8 housing vouchers and rental assistance). *Important note related to school services:* If families choose to withdraw from these housing subsidy programs, there may be an increase in the number of children qualifying for McKinney-Vento services and, thus, an increase in the need for support resources and in-district expenditures for transportation costs.

DOES THE TOTALITY OF CIRCUMSTANCES TEST APPLY TO ALL IMMIGRANTS?

No, the test only applies to people applying for a green card, applying for a visa to enter the United States, and potentially to lawful permanent residents who leave the United States for more than 6 months. Exceptions, meaning the rule *does not* apply, include:

- refugees;
- those who are applying for or who have been granted asylum;
- those who are applying for a green card under the Violence Against Women Act (VAWA);
- those who are applying as victims of a serious crime (U visa) or victims of human trafficking (T visa) or have one of these visas;
- children seeking Special Immigrant Juvenile Status;
- those who are enlisted in the U.S. Armed Forces or serving in active duty or in the Ready Reserve component of the U.S. Armed Forces, and the spouses and children of those serving, at the time of application or receipt of benefits;
- legal permanent residents when they apply for U.S. citizenship.

DOES ACCESSING BENEFITS THROUGH SCHOOL INCREASE THE RISK OF ICE ENFORCEMENT?

No. The Affordable Care Act (ACA) protects families who sign the necessary Medicaid waivers for states to receive reimbursement from the federal government. Additionally, child and family information provided to schools for Medicaid purposes *may not* be used by ICE for enforcement. Similarly, laws governing school

food programs specifically state that **information provided to schools *may not be shared with other agencies or used by ICE for enforcement.*** The same is true for community-based Medicaid services provided to children under age 21.

HOW COULD THE FINAL RULE ON PUBLIC CHARGE HURT CHILDREN AND FAMILIES?

The final rule on public charge marks a significant change that will fundamentally alter our immigration system, making it much harder for low- and moderate-income immigrants to obtain lawful permanent residency (become green card holders). It also makes immigrants and their families more fearful of receiving critical supports like healthcare, housing, and nutrition programs.

There is widespread concern about the chilling effect (i.e., hesitation to exercise a legal right) that could come as a result of this new rule. Studies have estimated that as many as 26 million people in immigrant families or those with immigrant members might forego participating in these programs, either due to deportation concerns, misinformation, or concern that they will be denied permanent residency.

One in four children in America has an immigrant parent. Families choosing not to access nutrition and housing assistance could have a profoundly detrimental effect on children—and schools could see a significant increase in children whose basic needs are not met at home—impacting their ability to learn and succeed in schools. Additionally, including Medicaid as a public benefit with a heavily weighted negative factor will have immediate and damaging repercussions for children’s healthcare access inside and outside of school due to a potential chilling effect, ***even though families will not be penalized for children under the age of 21 using Medicaid.***

The same is true for the possible impact on children’s food and housing security if families withdraw from SNAP, don’t apply for food supports at school directly, or become homeless because they no longer receive federal housing assistance. Circumstance resulting from food or housing insecurity and related family instability can contribute to students’ stress, anxiety, and trauma, which in turn can result in behavior and academic difficulties, poor school attendance, and physical and mental health problems.

PROVIDING ACCURATE INFORMATION TO ENSURE FAMILY ACCESS TO SERVICES IS CRITICAL

Families with immigrants, regardless of their specific immigration status, are living in a climate of fear and confusion, and many parents feel it is risky to enroll their children in healthcare and other programs. It’s important to fight this fear with facts. School psychologists can work with school administrators and other relevant school staff to ensure that families understand the law, their rights, and the importance of getting the services their children need. **Key messages include:**

- ***Families should not forego the Medicaid or nutrition services that they receive for their children through schools.***
- It is very important for families to continue accessing services available through schools, including those provided for children through Medicaid and free and reduced price meals. Both are exempt from the public charge rule when accessed through school.

- Additionally, Medicaid services provided to children under the age of 21 are not subject to the new public charge rule. It is important for families to get their children preventive health and mental health care services.
- These services support students' physical, behavioral, and mental health and are essential to their learning and success in school.
- Accessing Medicaid services or food support programs through schools *does not* increase the risk that a family or child will be penalized on the totality of circumstances test if/when they apply for permanent residency; child and family information provided to schools for these purposes **may not be used by ICE for enforcement**.
- Our school community is here to help families understand and navigate services provided through school. Families with further, specific questions regarding their immigration status decision should contact an immigration lawyer.

We have created a brief fact sheet that can be shared with parents and communities, in addition to resources for school psychologists who work with immigrant and refugee families. We are hopeful that school psychologists will be leaders in preventing misinformation and ensuring that families are making informed decisions about the services they are able to obtain through schools to the benefit of their children.

ADDITIONAL RESOURCES

Information for Immigrant Families Regarding the New Public Charge Rule and School-Based Services, NASP, https://www.nasponline.org/public_charge-families

National Immigration Law Center: FAQ on Proposed Changes to Public Charge Rule, <https://www.nilc.org/issues/economic-support/pubcharge/proposed-changes-to-public-charge-rule-faq/>

Privacy Protections in Selected Federal Benefits Programs, National Immigration Law Center, <https://www.nilc.org/wp-content/uploads/2018/03/privacy-protections-fed-programs-tbl-2018.pdf>

Supporting the Success of Homeless Children and Youths: A fact sheet & tips for teachers, principals, school leaders, counselors, and other school staff, U.S. Department of Education, <https://www2.ed.gov/policy/elsec/leg/essa/160315ehcyfactsheet072716.pdf>

Supporting Marginalized Students in Stressful Times, NASP, <https://www.nasponline.org/resources-and-publications/resources-and-podcasts/diversity/social-justice/supporting-marginalized-students-in-stressful-times-tips-for-educators>

Supporting Refugee Students: Tips for Educators, NASP, <https://www.nasponline.org/resources-and-publications/resources-and-podcasts/school-climate-safety-and-crisis/mental-health-resources/war-and-terrorism/supporting-refugee-students>

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Please cite this document as:

National Association of School Psychologists. (2019). *Information for schools regarding the final rule on "public charge" and its potential effects on immigrant students and families* [handout]. Bethesda, MD: Author.